THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.18784 of 1999

Dt:22.08.2007

Between:

S.Suryanarayana Raju.

.. Petitioner

and

The Co-op Tribunal and others.

.. Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.18784 OF 1999

ORDER:

The petitioner is a Member of the 3rd respondent-Cooperative Housing Society. He claims to have been allotted plot No.34 in the lay out prepared by the 3rd respondent and that he paid the entire consideration. It is stated that the 3rd respondent fraudulently executed the sale deed, in respect of that plot, in favour of the 4th respondent. In an inspection conducted under Section 52 of the A.P.Co-operative Societies Act, 1964, the action of the 3rd respondent in transferring the plot to the 4th respondent was pointed out. The petitioner initiated arbitration proceedings before the 2nd respondent. An

award was passed initially on 18.05.1987 directing cancellation of the sale in favour of the 4th respondent and transfer of plot No.34 in favour of the petitioner.

The 4th respondent filed W.P.No.14369 of 1987 challenging the award, on the ground that she was not given an opportunity. The writ petition was allowed on 12.04.1987, setting aside the award and remanding the matter to the 2nd respondent for fresh consideration and disposal, after giving opportunity to the 4th respondent. In the meanwhile, the plot was sold by the 4th respondent to the 5th respondent. After hearing them, the second respondent passed an award dated 15.09.1997 directing that the petitioner be allotted and sold another plot by the 3rd respondent or in the alternative, the amount paid by him be refunded with reasonable interest.

Not being satisfied with the said award, the petitioner filed C.T.A.No.263 of 1997 before the Co-operative Appellate Tribunal. The appeal was dismissed on 19.04.1999 and the award passed by the 2nd respondent was affirmed. Hence, this writ petition.

Sri G.Dasaradha Rami Reddy, learned counsel for

the petitioner submits that when the very sale of plot No.34 in favour of the 4th respondent was contrary to law and there existed voluminous evidence to show that the petitioner paid the entire consideration, there was no basis for the 2nd respondent in denying the relief of allotment and sale of that plot to the petitioner.

The learned Government Pleader for Co-operation, the learned counsel for the 3rd respondent and the learned counsel for respondents 4 to 6, on the other hand, submit that the sale of plot No.34 in favour of the 4th respondent took place several decades ago and thereafter, it has changed two hands; and at this length of time, the relief claimed by the petitioner cannot be granted.

In the award, dated 19.05.1987, the second respondent found that the allotment and sale of plot No.34 in favour of the 4th respondent was not proper and accordingly, directed that the same be transferred to the petitioner herein. This Court found that the award is defective, inasmuch as the aggrieved party was not impleaded in the arbitration proceedings. It was in this context, that respondents 4 and 5 were made parties in

A.R.C.No.136 of 1986. The finding as to the violation of bye-law 42 of the Bye-laws of the Society, in allotment of plot No.34 was reiterated in the award, dated 15.09.1997. However, the fact that the 4th respondent had, in turn, transferred the plot to the 5th respondent was taken into account and a direction was issued to the 3rd respondent to allot another plot of 244 yards in favour of the petitioner, or to refund the amount paid by him with reasonable interest. The same was affirmed by the Co-operative Tribunal. In the meanwhile, the plot came to be purchased by the 6th respondent and that construction has been made upon it. Under these circumstances, this Court finds it difficult to modify or vary the award passed by the 2nd respondent, as affirmed by the Tribunal.

Learned counsel for the petitioner submits that having been reconciled to the situation, the petitioner initiated execution proceedings to enforce the relief granted in the award, dated 15.09.1997, and no substantial progress has been taken place therein. The 3rd respondent cannot have it both ways. The award, dated 15.09.1997, passed against it has become final. Therefore, it would be under obligation to comply with the directions issued in the award.

For the foregoing reasons, the writ petition is disposed of, leaving it open to the petitioner to pursue his remedies for enforcing the award, dated 15.09.1997, as affirmed in C.T.A.No.263 of 1997. The authority concerned shall ensure that the relief granted to the petitioner is extended to him, without any further delay. There shall be no order as to costs.

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22.08.2007

JSU